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9 *Attorneys for Defendant*

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 RAYMOND SULLIVAN and JULIA
13 CAUSEY, on behalf of themselves and all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 RIVIERA HOLDINGS CORPORATION
18 d/b/a RIVIERA HOTEL AND CASINO and
DOES 1 through 50, inclusive,

19 Defendants.
20

Case No.:

**NOTICE OF REMOVAL OF ACTION
(FEDERAL QUESTION
JURISDICTION)**

21 **TO: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**

22 PLEASE TAKE NOTICE that Defendant Riviera Operating Corporation d/b/a Riviera
23 Hotel & Casino ("Defendant"), improperly identified in the Collective and Class Action Complaint
24 as Riviera Holdings Corporation d/b/a Riviera Hotel and Casino, by and through its undersigned
25 counsel, hereby files this Notice of Removal of Action of this case from the Eighth Judicial District
26 Court of the State of Nevada, in which it is now pending, to the United States District Court for the
27 District of Nevada. The federal question jurisdiction of this Court is invoked under 28 U.S.C. §
28 1331 and supplemental jurisdiction over state law claims is invoked under 28 U.S.C. § 1367.

I. Introduction

Plaintiffs Raymond Sullivan and Julia Causey (“Plaintiffs”) filed this action against Defendant in the Eighth Judicial District Court of the State of Nevada, Case No. A-13-692643-C (the “State Court Action”). Copies of the Summons and Collective and Class Action Complaint (“Complaint”) were served on Defendant’s registered agent on December 30, 2013. (*See* Exhibit A.) The State Court Action involves a wage and hour dispute. Specifically, Plaintiffs claim that Defendant required them to retrieve and return money from Defendant’s cashier cage prior to the start and after the end of each shift, and that such work was performed “off-the-clock.” (*See* Complaint at ¶¶ 8-9.) Plaintiffs purport to bring wage and hour claims on behalf of themselves and all others similarly situated as both a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), and a class action under Nevada law.

Plaintiffs assert the following claims against Defendant: (1) failure to pay wages for all hours worked in violation of the FLSA; (2) failure to pay overtime in violation of the FLSA; (3) failure to compensate for all hours worked in violation of NRS 608.140 and 608.016; (4) failure to pay minimum wages in violation of the Nevada Constitution and NRS 608.250; (5) failure to pay overtime in violation of NRS 608.140 and 608.018; (6) failure to timely pay all wages due and owing in violation of NRS 608.140 and 608.020-050; (7) failure to pay the correct overtime rate in violation of the FLSA; and, (8) breach of contract.

II. This Court Has Federal Question Jurisdiction Under 28 U.S.C. § 1331

A. Plaintiff’s Claims Assert A Federal Question

Plaintiff’s primary claims for relief – failure to pay wages for all hours worked (Claim One), failure to pay federal overtime (Claim Two), and failure to pay the correct federal overtime rate (Claim Seven) – are all brought pursuant to the FLSA. (*See* Complaint at ¶¶ 19-30, 54-59.) Accordingly, Plaintiffs’ Complaint presents federal question jurisdiction under 28 U.S.C. § 1331.

B. This Court Has Supplemental Jurisdiction Over Plaintiff’s Remaining State Law Claims Under 28 U.S.C. § 1367

The state law claims alleged in Plaintiffs’ Complaint purport to arise from the same occurrence and/or common nucleus of operative facts that underlie Plaintiffs’ federal law claims.

Specifically, Plaintiffs' purported Rule 23 class action claims, which allege violations of Nevada wage hour and law under NRS Chapter 608 (Claims Three – Six), derive from a common nucleus of operative facts concerning Plaintiffs' banking at the cashier cage and Defendant's compensation of same. (*Id.* at ¶¶ 31-53.) Likewise, Plaintiffs' purported class action claim for breach of contract (Claim Eight) is also derived from the same common nucleus of operative facts and, thus, forms part of the same case and controversy. (*Id.* at ¶¶ 60-65.) Therefore, to the extent Plaintiffs can pursue a private right of action on their state law claims, this Court has supplemental jurisdiction over same pursuant to 28 U.S.C. § 1367.

III. This Removal Is Timely

Plaintiffs filed this action in the Clark County District Court on December 4, 2013. Plaintiffs completed service of the Summons and Complaint on Defendant on December 30, 2013. As this notice is being filed on January 29, 2014, 30 calendar days after the Complaint was served on Defendant, the removal is timely.

IV. Requirements For Removal

Defendant has met all other requirements for removal as follows:

- A. Defendant has attached to this notice as Exhibit A, copies of "all process, pleadings and orders" served upon it pursuant to 28 U.S.C. § 1446(a).
- B. Defendant has also concurrently filed a copy of this Notice of Removal in the Eighth Judicial District Court for the State of Nevada.
- C. Defendant has served a copy of this notice upon all parties' counsel.

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1 D. This Notice of Removal is executed pursuant to Federal Rule of Civil Procedure 11.
2 Dated this 27th day of January, 2014.

3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

4 
5 _____
6 Anthony L. Martin

7 Jamie L. Zimmerman

8 Wells Fargo Tower, Suite 1500

9 3800 Howard Hughes Parkway

10 Las Vegas, NV 89169

11 Telephone: 702.369.6800

12 *Attorneys for Defendant*

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

WELLS FARGO TOWER

SUITE 1500, 3800 HOWARD HUGHES PARKWAY

LAS VEGAS, NV 89169

TELEPHONE: 702.369.6800

CERTIFICATE OF SERVICE

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

MARK R. THIERMAN, ESQ.

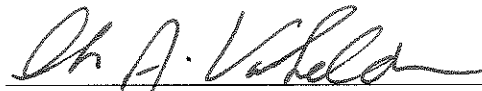
JOSHUA D. BUCK, ESQ.

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby further certify that service of **NOTICE OF REMOVAL OF ACTION (FEDERAL QUESTION JURISDICTION)** was also made by depositing a true and correct copy of same for mailing, first class mail, postage prepaid thereon, at Las Vegas, Nevada, to the following:

Mark R. Thierman, Esq.
Joshua D. Buck, Esq.
THIERMAN LAW FIRM, P.C.
7287 Lakeside Drive
Reno, Nevada 89511

Attorneys for Plaintiff

DATED this 29th day of January, 2014.



An Employee of OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

EXHIBIT A

CIVIL COVER SHEET

CoLeL-Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

A-13-692643-C

XII

I. Party Information

Plaintiff(s) (name/address/phone): RAYMOND SULLIVAN and JULIA CAUSEY

Defendant(s) (name/address/phone): RIVIERA HOLDINGS CORPORATION d/b/a RIVIERA HOTEL AND CASINO

Attorney (name/address/phone): Mark R. Thierman, Bar No. 8285

Attorney (name/address/phone):

Joshua R. Buck, Bar No. 12187, Thierman Law Firm, 7287 Lakeside Dr., Reno, NV 89511, 775-284-1500

☐ Arbitration Requested

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence -- Auto <input type="checkbox"/> Negligence -- Medical/Dental <input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence -- Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate

Other Civil Filing Types

Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment -- Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters
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III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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12/3/13

Date

Signature of initiating party or representative

See other side for family-related case filings.

SUMM

Mark R. Thierman, Nev. Bar No. 8285

mark@thiermanlaw.com

Joshua D. Buck, Nev. Bar No. 12187

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RAYMOND SULLIVAN and JULIA
CAUSEY,

Plaintiff(s),

vs.

RIVIERA HOLDINGS CORPORATION
d/b/a RIVIERA HOTEL AND CASINO;
and DOES 1-50,

Defendant(s).

Case No.: A-13-692643-C

Dept. No.: XII

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

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Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email laborlawyer@pacbell.net www.laborlawyer.net

CLERK OF THE COURT

17 2013

RECEIVED

1 a. File with the Clerk of this Court, whose address is shown, a formal written
2 response to the Complaint in accordance with the rules of the Court, with
3 the appropriate filing fee.

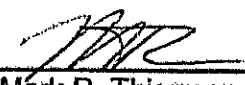
4 b. Serve a copy of your response upon the attorney whose name and
5 address is shown below.
6

7 2. Unless you respond, your default will be entered upon application of the
8 Plaintiff(s) and failure to respond will result in a judgment of default against you
9 for the relief demanded in the Complaint, which could result in the taking of
10 money or property or other relief requested in the Complaint.

11 3. If you intend to seek the advice of an attorney in this matter, you should do so
12 promptly so that your response may be filed on time.

13 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
14 board members, commission members and legislators each have 45 days after
15 service of this Summons within which to file an Answer or other responsive
16 pleading to the Complaint.
17
18

19 Submitted by:
20

21 
22 Mark R. Thierman
23 Joshua D. Buck
24 Attorneys for Plaintiff

STEVEN D. GRIERSON
CLERK OF COURT

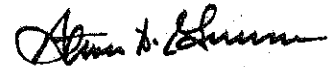
By: 

Deputy Clerk

Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Electronically Filed
12/04/2013 05:26:09 PM



CLERK OF THE COURT

1 Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanlaw.com

2 Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanlaw.com

3 THIERMAN LAW FIRM, P.C.

4 7287 Lakeside Drive
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5 Tel. (775) 284-1500

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7 *Attorneys for Plaintiff*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 RAYMOND SULLIVAN, and JULIA
11 CAUSEY, on behalf of themselves and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 RIVIERA HOLDINGS CORPORATION
16 d/b/a RIVIERA HOTEL AND CASINO and
17 DOES 1 through 50, inclusive,

18 Defendant.

Case No.: A- 13- 69 2643- C

Dept. No.: XII

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

**(EXEMPT FROM ARBITRATION
PURSUANT TO NAR 5)**

- 1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;
- 2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 3) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 4) Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250;
- 5) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
- 6) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050;
- 7) Failure to Pay the Correct Overtime Rate in Violation of the FLSA, 29 U.S.C. § 207(e); and
- 8) Breach of Contract.

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1 COME NOW Plaintiffs RAYMOND SULLIVAN and JULIA CAUSEY ("Plaintiffs") on
2 behalf of themselves and all others similarly situated and allege the following:

3 All allegations in this Complaint are based upon information and belief except for those
4 allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this
5 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable
6 opportunity for further investigation and discovery.

7 JURISDICTION AND VENUE

8 1. This Court has original jurisdiction over both state and federal claims alleged
9 herein. This Court has original jurisdiction over the state law claims alleged herein because the
10 amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages has a private
11 right of action pursuant to Nevada Revised Statute ("NRS") sections 608.050, 608.250, and
12 608.140. *See also Csomos v. Venetian Casino Resort, LLC*, 2011 Nev. Unpub. LEXIS 1629 (Nev.
13 2011) ("The legislative scheme is consistent with a private cause of action for employees and the
14 Legislature enacted the statute to protect employees, supporting a private cause of action under
15 NRS 608.040.);¹ *Busk v. Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir.
16 Nev. Apr. 12, 2013) ("Nevada Revised Statute § 608.140 does provide a private right of action to
17 recoup unpaid wages."); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932
18 Nev. LEXIS 34 (Nev. 1932) (recognizing that former employees have a private cause of action
19 to sue their employer (as well as third party property owners where the work was performed) for
20 wages and waiting penalties under NRS 608.040 and NRS 608.050). This Court has jurisdiction
21 over the federal claims alleged herein pursuant to Fair Labor Standards Act ("FLSA"), 29 U.S.C.
22 § 216(b).

23 2. Plaintiffs are seeking to recover unpaid wages due pursuant to Nevada statutory
24 authority and pursuant to an agreement (implied by law and fact) to pay for all hours worked
25 and/or under the wage laws of the State of Nevada. Plaintiffs therefore have a private right of
26

27 ¹ "There is no bar to citing a published or unpublished decision from another circuit, regardless
28 of its precedential value within the other circuit." *American Economy Ins. Co. v. Reboans, Inc.*,
28 900 F. Supp. 1246, 1257 (N.D. Cal. 1995); Fed R. App. Proc. 32.1 and Ninth Circuit Rule 36-
3.

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1 action pursuant to Nevada Revised Statute ("N.R.S.") §§ 608.040 and 608.140 as well as a claim
 2 for at least minimum wages for all hours worked "off the clock" pursuant to NRS §608.260 and
 3 Section 16 of Article 15 of the Nevada State Constitution.

4 3. Venue is proper in this Court because one or more of the Defendants named herein
 5 maintains a principal place of business or otherwise is found in this judicial district and many of
 6 the acts complained of herein occurred in Clark County, Nevada.

7 PARTIES

8 4. Plaintiff RAYMOND SULLIVAN is a natural person who is and was a resident of
 9 the State of Nevada at all relevant times herein and has been employed by Defendant as a non-
 10 exempt hourly employee in its Las Vegas casino within the last three years.

11 5. Plaintiff JULIA CAUSEY, is a natural person who is and was a resident of the
 12 State of Nevada at all relevant times herein and was formerly employed by Defendant as a non-
 13 exempt hourly employee in its Las Vegas casino within the last three years.

14 6. Defendant RIVIERA HOLDINGS CORPORATION dba RIVIERA HOTEL AND
 15 CASINO (hereinafter "DEFENDANT" or "RIVIERA") is a Nevada corporation with a principal
 16 place of business at 3770 Las Vegas Boulevard, South Las Vegas, NV and is an employer engaged
 17 in commerce under the provisions of the Fair Labor Standards Act, 29 U.S.C. §201 et seq.

18 7. The identity of DOES 1-50 is unknown at this time and this Complaint will be
 19 amended at such time when the identities are known to Plaintiff. Plaintiff are informed and
 20 believe that each of Defendants sued herein as DOE is responsible in some manner for the acts,
 21 omissions, or representations alleged herein and any reference to "Defendant," "Defendants," or
 22 "Riviera" herein shall mean "Defendants and each of them."

23 FACTUAL ALLEGATIONS

24 8. For most of the relevant time period alleged herein, Plaintiffs were required by
 25 Defendant to retrieve and return cash money from a so-called "satellite bank" or "cashier cage"
 26 (hereinafter referred to as "cashier cage") prior to the start and after the end of their regularly
 27 scheduled shift each and every day without being compensated for engaging in these principal
 28

1 work activities. By maintaining and enforcing this policy, Defendant forced Plaintiff to perform
2 work "off-the-clock".

3 9. The total amount of time spent off-the-clock measured from the point in time when
4 Plaintiff completed their first principal activity at the cashier cage until they actually clocked-in
5 and started receiving compensation was approximately 15-minutes each and every workday.
6 Similarly, the total amount of time spent off-the-clock measured from the point in time when
7 Plaintiff completed their last principal activity at the cashier cage from the point in time when
8 they actually clocked-out was approximately 15-minutes each and every workday. In sum,
9 Plaintiff worked approximately 30-minutes off-the-clock and without compensation.

10 COLLECTIVE AND CLASS ACTION ALLEGATIONS

11 10. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
12 Complaint as though fully set forth herein.

13 11. Plaintiffs bring this action on behalf of themselves and all other similarly situated
14 and typical employees as both a collective action under the FLSA and a true class action under
15 Nevada law.

16 12. The statute of limitations under the FLSA is 3 years for willful violations.

17 13. The statute of limitations for violation of a statutory duty under Nevada law is 3
18 years.

19 14. The statute of limitations for constitutional violations and breach of a contract
20 under Nevada law is 6 years.

21 15. The FLSA Class is defined as follows: **All current and former non-exempt**
22 **employees who were employed by Defendant during the relevant time period and who were**
23 **required to carry or use a cash bank in carrying out their employment tasks.**

24 16. The Nevada State Class is defined as follows: **All current and former non-**
25 **exempt employees who were employed by Defendant during the relevant time period and**
26 **who were required to carry or use a cash bank in carrying out their employment tasks.**

27 17. With regard to the conditional certification mechanism under the FLSA, Plaintiffs
28 are similarly situated to those that they seek to represent for the following reasons, among others:

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1 A. Defendant employed Plaintiff as hourly employees who did not receive pay
 2 for all hours that Defendant suffered or permitted them to work, and did not receive
 3 overtime premium pay of one and one half their regular rate of pay for all hours worked
 4 over forty (40) hours in a workweek.

5 B. Plaintiffs' situations are similar to those they seek to represent because
 6 Defendant failed to pay Plaintiffs and all other Class Members for all time they were
 7 required to work, including time spent waiting and frequenting the "cashier cage" to
 8 perform pre-shift and post-shift work activities without compensation.

9 C. Common questions exists whether the time spent by Plaintiffs and all other
 10 Class Members engaging in pre-shift and post-shift activities at the "cashier cage" is
 11 compensable under federal law and whether Defendant failed to pay Plaintiffs and Class
 12 Members one and one half times their regular rate for all hours worked in excess of 40
 13 hours a week

14 D. Upon information and belief, Defendant employs, and has employed, in
 15 excess of 500 Class Members within the applicable statute of limitations.

16 E. Plaintiffs have filed or will file their consents to sue with the Court.

17 F. Defendant has for many months known or should have known its policies
 18 alleged herein were unlawful and that owes employees this money, and has willfully failed
 19 to pay its employees properly.

20 18. Pursuant to the recent decision of the Ninth Circuit Court of Appeals in *Busk v.*
 21 *Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013), both
 22 opt-in collective or representative treatment of claims under the federal Fair Labor Standards Act
 23 and FRCP Rule 23 Class treatment of pendant state law claims are appropriate in the same action.
 24 Therefore, FRCP Rule 23(b)(3) Class treatment for all non-FLSA claims alleged in this complaint
 25 is appropriate in this case for the following reasons:

26 A. The Class is Sufficiently Numerous: Upon information and belief,
 27 Defendant employs, and has employed, in excess of 500 Class Members within the
 28 applicable statute of limitations.

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1 B. Plaintiff's Claims are Typical to Those of Fellow Class Members: Each
 2 Class Member is and was subject to the same practices, plans, or policies as Plaintiffs—
 3 Defendant required Class Members to frequent the “cashier cage” to perform pre-shift and
 4 post-shift work activities without compensation.

5 C. Common Questions of Law and Fact Exist: Common questions of law and
 6 fact exist and predominate as to Plaintiffs and the Class, including, without limitation:
 7 Whether the time spent by Plaintiffs and Class Members engaging in pre-shift and post-
 8 shift activities at the “employee bank” is compensable under Nevada law.

9 D. Plaintiffs are an Adequate Representative of the Class: Plaintiffs will fairly
 10 and adequately represent the interests of the Class because Plaintiffs are a member of the
 11 Class, they have issues of law and fact in common with all members of the Class, and they
 12 do not have interests that are antagonistic to Class members.

13 E. A Class Action is Superior: A class action is superior to other available
 14 means for the fair and efficient adjudication of this controversy, since individual joinder
 15 of all members of the Class is impractical. Class action treatment will permit a large
 16 number of similarly situated persons to prosecute their common claims in a single forum
 17 simultaneously, efficiently, and without unnecessary duplication of effort and expense.
 18 Furthermore, the expenses and burden of individualized litigation would make it difficult
 19 or impossible for individual members of the Class to redress the wrongs done to them,
 20 while an important public interest will be served by addressing the matter as a class action.
 21 Individualized litigation would also present the potential for inconsistent or contradictory
 22 judgments.

23 FIRST CAUSE OF ACTION

24 (Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*)

25 19. Plaintiffs reallege and incorporate by reference all the paragraphs above in this
 26 Complaint as though fully set forth herein.
 27
 28

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20. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, Plaintiffs and Class Members are entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher, for all hours actually worked.

21. 29 U.S.C. § 206(a)(1) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an hour, beginning 24 months after that 60th day."

22. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendant failed to pay Plaintiffs and the Class Members for all hours worked.

23. Defendant's unlawful conduct has been widespread, repeated, and willful. Defendant knew or should have known that its policies and practices have been unlawful and unfair at the time and again when its sister subsidiary settled the Aria case cited above.

24. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendant pay Plaintiffs and all other members of the Class their minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207)

25. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

26. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged

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1 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
 2 unless such employee receives compensation for his employment in excess of the hours above
 3 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

4 27. Once the work day has begun, all time suffered or permitted by the employer to be
 5 worked by the employee is compensable at the employee’s regular rate of pay, whether scheduled
 6 or not.

7 28. By failing to compensate Plaintiffs and Class Members for the time spent engaging
 8 in off-the-clock activities identified above, Defendant failed to pay Plaintiffs and Class Members
 9 overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C.
 10 Section 207(a)(1).

11 29. Defendant’s unlawful conduct has been widespread, repeated, and willful.
 12 Defendant knew or should have known that its policies and practices have been unlawful and
 13 unfair.

14 30. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,
 15 that Defendant pay Plaintiffs and all members of the Class one and one half times their regular
 16 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant
 17 time period alleged herein together with liquidated damages, attorneys’ fees, costs, and interest
 18 as provided by law.

19 THIRD CAUSE OF ACTION

20 (Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140, 608.016 and the
 21 Agreement of the Parties)

22 31. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
 23 Complaint as though fully set forth herein.

24 32. NRS 608.140 provides that an employee has a private right of action for unpaid
 25 wages.

26 33. NRS 608.016 states that “An employer shall pay to the employee wages for each
 27 hour the employee works.” Hours worked means anytime the employer exercises “control or
 28 custody” over an employee. See NRS 608.011 (defining an “employer” as “every person having

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control or custody . . . of any employee.”). Pursuant to the Nevada Administrative Code, hours worked includes “all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee.” NAC 608.115(1).

34. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendant failed to pay according to the terms of their employment. Defendant also failed to pay Plaintiffs and Class Members for all hours worked in violation of NRS 608.140 and 608.016.

35. Wherefore, Plaintiffs demand for themselves and for all Class Members payment by Defendant at the regular hourly rate of pay for all hours worked during the relevant time period alleged herein together with attorneys’ fees, costs, and interest as provided by law.

FOURTH CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of the Nevada Constitution)

36. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

37. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that “[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. . . . An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.”

38. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendant failed to pay Plaintiffs and Class Members for all hours worked in violation of the Nevada Constitution.

39. Wherefore, Plaintiffs demand for themselves and for all Class Members payment by Defendant at their regular hourly rate of pay or the minimum wage rate, whichever is higher, for all hours worked during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018)

40. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

41. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

42. NRS 608.018(1) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works: (a) More than 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

43. NRS 608.018(2) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

44. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendant failed to pay Plaintiffs and Class Members daily overtime premium pay for all hours worked over eight (8) hours in a workday to those Class Members who were paid a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of pay of time and one half their regular rate for all members of the Class who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

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SIXTH CAUSE OF ACTION

50. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee for the purpose of collecting the wages or compensation owed to them "in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default."

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51. By failing to pay Class Members who are former employees of Defendant for all hours worked in violation of the federal and state laws identified herein, Defendant has failed to timely remit all wages due and owing to Class Members who are former employees.

52. Despite demand, Defendant willfully refuses and continues to refuse to pay Class Members who are former employees all the wages that were due and owing upon the termination of their employment.

53. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140 and 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, for all Class Members who have terminated employment from Defendant during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

SEVENTH CAUSE OF ACTION

(Failure to Pay the Correct Overtime Rate in Violation of the FLSA, 29 U.S.C. § 207(e).)

54. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

55. Defendant paid Plaintiffs and Class Members a lunch stipend of \$31.75 per month while Plaintiffs and all class members worked for Defendant. Defendant did not include the value of this stipend in the calculation of its regular rate of pay, nor did it include the value of the stipend in the regular rate of pay for purposes of calculating overtime compensation due.

56. Under the FLSA, the "regular rate" at which an employee must be paid includes "all remuneration for employment paid to, or on behalf of, the employee, divided by hours worked in a workweek." 29 U.S.C. § 207(e).

57. Under the Code of Federal Regulations, lunch stipends must be included in an employee's "regular rate" of pay:

The expenses for which reimbursement is made must in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. *An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not*

1 *excluded from the regular rate as "reimbursement for expenses."* Whether
 2 the employer "reimburses" the employee for such expenses or furnishes the
 3 facilities (such as free lunches or free housing), the amount paid to the
 4 employee (or the reasonable cost to the employer or fair value where
 facilities are furnished) enters into the regular rate of pay as discussed in
 §778.116.

5 29 C.F.R. § 778.217(d) (emphasis added). "Where board, lodging, or other facilities are
 6 customarily furnished as additions to a cash wage, the reasonable cost of the facilities to the
 7 employer must be considered as part of the employee's regular rate of pay. *See Walling v. Alaska*
 8 *Pacific Consolidated Mining Co.*, 152 F.2d 812 (9th Cir. 1945), *cert. denied*, 327 U.S. 803." 29
 9 C.F.R. § 531.37(b).

10 58. By failing to include the lunch stipend in the regular rate of pay of Plaintiffs and
 11 Class Members, Defendant thus failed to pay the correct rate of overtime premium compensation
 12 for each overtime hour worked in violation of 29 U.S.C. § 207(e).

13 59. Wherefore, Plaintiffs demand for themselves and for the Class that Defendant pay
 14 them the difference between any overtime compensation actually paid and one and one half times
 15 their correct "regular rate" of pay for all hours worked during the Class Period in excess of 40
 16 hours in a workweek during the relevant time period alleged herein together with liquidated
 17 damages, attorneys' fees, costs, and interest as provided by law.

18 EIGHTH CAUSE OF ACTION

19 (Breach of Contract)

20 60. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
 21 Complaint as though fully set forth herein.

22 61. At all times relevant herein, Defendant had an agreement with Plaintiffs and with
 23 every Class Member to pay an agreed upon hourly wage rate for all hours they worked for
 24 Defendant. Indeed, Defendant's offered to pay Plaintiffs and Class Members a specific rate of
 25 pay in exchange for Plaintiffs and Class Members' promise to perform work for Defendant.

26 62. The parties' employment agreement necessarily incorporated all applicable
 27 provisions of both state and federal law, including especially the labor laws of the State of Nevada.
 28

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63. Defendant breached its agreement with Plaintiffs and Class Members by failing to compensate them for all hours worked, namely the hours spent engaging in banking activities, at the agreed upon rate of pay.

64. As a result of Defendant's breach, Plaintiffs and Class Members have suffered economic loss that includes lost wages and interest.

65. Wherefore, Plaintiffs demand for themselves and for Class Members that Defendant pay Plaintiffs and Class Members their agreed upon rate of pay for all hours worked off the clock during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

PRAYER FOR RELIEF

Wherefore Plaintiffs, by themselves and on behalf of all Class Members, pray for relief as follows relating to their collective and class action allegations:

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order certifying this action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 for all other claims presented in this complaint;;
3. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
4. For damages according to proof for regular rate pay under federal laws for all hours worked;
5. For damages according to proof for minimum rate pay under federal law for all hours worked;
6. For damages according to proof for overtime compensation under federal law for all hours worked over 40 per week;
7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
8. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;

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9. For damages according to proof for minimum wage rate pay under the Nevada Constitution for all hours worked;
10. For damages according to proof for overtime compensation under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all subclass members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;
11. For waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
12. For damages pursuant to Defendant's breach of contract;
13. For interest as provided by law at the maximum legal rate;
14. For reasonable attorneys' fees authorized by statute;
15. For costs of suit incurred herein;
16. For pre-judgment and post-judgment interest, as provided by law, and
17. For such other and further relief as the Court may deem just and proper.

DATED: December 4, 2013

/s/Joshua D. Buck
Mark R. Thierman
Joshua D. Buck

Attorneys for Plaintiff